

Appl. No. 10/695,283
Docket No. 9086M
Amdt. dated January 25, 2010
Reply to Office Action mailed on October 29, 2009
Customer No. 27752

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REMARKS/ARGUMENTS

Claims 1 and 6-9 are pending in the application. Claim 1 has been amended to specify the charge of the particle. Basis is at page 9, lines 27-28 of the specification. It is submitted that the amendment is fully supported and entry is requested.

Rejections Under 35 USC 103

Claim 1 stands rejected under §103(a) over US 2003/0017125 in view of US5,866,110, and in further view of US 7,056,880, for reasons of record at pages 2-4 of the Office Action.

Claims 1 and 6-9 stand rejected over US 2002/0058015 in view of US 2003/0017125 and in view of US5,866,110, and further in view of US 7,056,880, for reasons of record at pages 4-6 of the Office Action.

Applicants respectfully traverse all rejections, to the extent they may apply to the claims now under consideration.

At the outset, it is noted that the claims have been amended to specify the cationic charge of the particles, thereby further distinguishing them over the cited documents.

Controlling Case Law

Previous arguments and citations to case law in support of patentability continue to apply, but will not be repeated exhaustively herein, for the sake of brevity.

Applicants have previously challenged, and continue to challenge, the supposition on the part of the Examiner that the cited documents in any way suggest that the glass transition temperature of the polymer used for the perfume-containing particle of the invention would have any effect on the perfumery "top note" materials that are key to the present invention. The Examiner's attention is again directed to MPEP 2144.05 (II) (B) for the proposition that a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. [Citing *In re Antonie*, 559 F.2d 618 (CCPA 1977).] Moreover, it is again submitted that no *prima facie* case of obviousness has been made. MPEP2142.

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The Examine has cited '7125 at [0052] and [0053] as assertedly showing the water insoluble polymer having at least one cationic monomer and one or more non-cationic monomers. (Office Action at page 3.)

Applicants respectfully submit that the Examiner has misapprehended those cited passages of '7125. At [0052], the use of "one additional polymer" which is not a (meth) acrylic, as described above [emphasis supplied] is contemplated. Presumably, the "above" relates to [0023], [0024] and [0025], each of which discloses various monomers. Then, one must subtract from [0023-0025] any (meth) acrylate, since the cited passage at [0052] clearly teaches "which is not a methacrylic copolymer." Having done that, one is left with several prospective candidates, e.g., N-vinyl formamide, maleic acid, N-vinyl-2-pyrrolidone, and others, none of which appear to be cationic, as required by the present claims.

With regard to the cited paragraph [0053], that clearly relates to the various prospective constituents of the overall "composition according to the invention," not to the substituents used to make the particles.

In short, it is submitted that, even if it were appropriate to dissect the encyclopedic disclosures of '7125 and extract therefrom only those bits and pieces that could, in hindsight, conceivably be relative to the present invention, one would still be short a key ingredient, i.e., the cationic portion of the polymer particle.

But, that's not all that's missing from '7125.

The benefit agent herein is a perfume having specified "top notes." All '7125 refers to is "perfumes." See [0053]. Yet, the Examiner dismisses that distinction as "inherently within the ranges [of materials] set forth in Claim 1." Succinctly stated, the *Robertson* case cited earlier holds to the contrary.

The '110 patent is cited to show the viscosity, another parameter that is absent from '7125. And, the Examiner notes that '110 does not teach the glass transition temperature of 50°C to 120°C. Quite clearly, neither does '7125. Indeed, [0050] of that document specifies a glass transition temperature of -100°C to 15°C. One has to ask, then, what would possibly motivate one of skill in the art to substitute therefor materials having the -120°C to 120°C, preferably -80°C to 60°C glass transition temperatures of '880?

And, again, nothing in the combination of the cited documents even faintly suggests the perfume top note problem being addressed by Applicants herein. (This, of course, is part of the

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"invention as a whole" test under §103.) Accordingly, what would lead one to tinker and experiment with and modify the glass transition temperature of a polymer particle to help overcome that problem? Said another way, since the cited documents contain no statement or recognition of the problem, there is no motivation to combine the cited documents to solve the problem.

In light of the *Graham* principles, it is submitted that the scope and content of the cited combination of '7125/'110/'880 does not support a *prima facie* case of obviousness under §103. Reconsideration and withdrawal of all rejections on this basis are requested.

With regard to US 2002/0058015 in view of US 2003/0017125 in view of US 5,886,110 and further in view of US 7,056,980, the polymers of '8015 appear to be quite different from those of the present invention, since they comprise a water-soluble polymer having water-insoluble particles of said polymer dispersed therein; see [0019]. Then, the active ingredient (which can be "fragrances"; see [0020]) is "dispersed in the polymeric composition by neutralization or chelation".

With respect, it is submitted that nothing in '8015 fairly suggests the glass transition temperature aspect of the present invention, nor the cationic charge association between the particles and the perfume materials having the claimed Kovats Index.

Moreover, to combine '8015 with '7125 in the manner suggested by the Examiner would lead to particles having the -100 to 15°C glass transition temperature. In fact, it is noted that, simply because the Examiner is no longer citing US 5,585,092, that does not mean its disclosures neatly vanish from the overall record herein. Instead those disclosures would require a glass transition temperature above the herein-claimed 120°C. And, clearly, nothing in the cited portions of '110 relating to viscosity adds anything to this key aspect of the present invention. Finally, it seems fair to question why one of skill in the art would focus on the glass transition temperatures of '880 and completely ignore those of '7125 and the Examiner's previously-cited '092. It is respectfully submitted that the only possible answer is that such focus is purely the result of impermissible hindsight.

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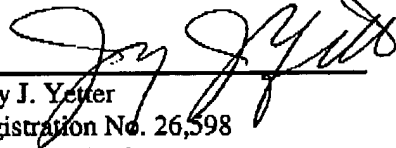
Net: It is submitted that the claims as now amended are not rendered *prima facie* obvious over the '8015/'7125/'880/'110 combinations of documents. Withdrawal of all rejections is requested.

In light of the foregoing, early and favorable action in the case is requested.

Respectfully submitted,

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